LIM THEAN LEE

v.

INSPECTOR-GENERAL OF POLICE & ORS.

SUPREME COURT, KUALA LUMPUR
HASHIM YEOP SANI CJ (MALAYA)
HARUN HASHIM SCJ
LC VOHRAH J
[CRIMINAL APPEAL NO. 05-200-90]
29 OCTOBER 1991

POLICE: *Removal of detenues to attend enquiry before Advisory Board - Whether order of Minister under Act required - Constitutional provisions - Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), 11A(1), 15, 16 - Federal Constitution, Article 151.*

The appellant, and 22 others, were the subject of detention orders made under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985 (the Act) who were removed from the place of detention to attend the enquiry by the Advisory Board constituted under art. 151 of the Federal Constitution.

The appellant contended that their removal to attend the enquiry by the Advisory Board without an order of the Minister under ss. 15 and 16 of the Act rendered their further detention unlawful.

The applicant's application for a writ of *habeas corpus* was dismissed. Hence this appeal.

Held:

[1] Section 15 speaks of a removal from a place of detention to another place of detention. Section 16 confers a discretion on the Minister to order that a detainee may be taken to another place on proof to the satisfaction of the Minister that the presence of the detainee at the place is required in the interests of justice or for the purpose of any public or other enquiry or in the national interest or in the interests of the person detained.

[2] It was not necessary to have the authorisation of the Minister to take the detainee out of the place of detention for the purpose of attending the review of the Advisory Board as the authority for the steps taken to give effect to those rights is the Federal Constitution itself.

[3] Section 16(1) of the Act gives a discretion to the Minister which discretion he may or may not exercise depending on the facts of each case. This section however has no application to an enquiry of the Advisory Board constituted under an enquiry constituted under art. 151 of the Federal Constitution.

[Appeal dismissed.]

[**Bahasa Malaysia** Translation of Headnote]

PERINTAH TAHANAN: *Pemindahan orang tahanan untuk menghadhiri siasatan di hadapan Lembaga Penasihat - Sama ada perintah Menteri di bawah Akta diperlukan - Peruntukan Perlembagaan - Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985, ss.6(1),11A(1), 15, 16 - Perlembagaaan Persekutuan, Perkara 151.*

Perayu dan 22 orang yang lain telah ditahan di bawah perintah tahanan yang dibuat menurut s. 6(1) Akta Dadah Berbahaya (Langkah-langkah Pencegahan Khas) 1985 (Akta tersebut). Mereka telah dipindahkan dari tempat tahanan untuk menghadiri siasatan (enquiry) di hadapan Lembaga Penasihat yang ditubuh di bawah Perkara 151 Perlembagaan Persekutuan.

Perayu telah berhujah bahawa pemindahan mereka untuk menghadiri siasatan di hadapan Lembaga Penasihat tanpa perintah dari Menteri di bawah ss. 15 atau 16 telah menjadikan penahanan selanjut mereka tidak sah dibawah undang-undang.

Permohonan perayu untuk *habeas corpus* telah ditolak dan ini adalah rayuan dari keputusan tersebut.

Diputuskan:

[1] Seksyen 15 adalah berhubungan dengan pemindahan tahanan dari satu tempat tahanan ke satu tempat tahanan yang lain. Seksyen 16 memberi budibicara kepada Menteri untuk memerintahkan pemindahan seorang tahanan ketempat yang lain atas bukti yang memuaskan kepada Menteri bahawa kehadiran orang tahanan itu di tempat tersebut adalah perlu demi keadilan atau bagi tujuan siasatan awam atau siasatan lain demi kepentingan negara atau demi kepentingan orang tahanan itu sendiri.

[2] Adalah tidak perlu untuk memperolehi kebenaran Menteri untuk mengambil orang tahanan itu dari tempat tahanan untuk tujuan menghadiri pengkajian semula di hadapan Lembaga Penasihat kerana Perlembagaan Persekutuan menguasakan langkah-langkah yang perlu diambil untuk memberi kesan kepada hak-hak tersebut.

[3] Seksyen 16(1) Akta tersebut memberi budibicara kepada Menteri dan terpulanglah kepada Menteri sama ada beliau ingin menggunakan budibicara tersebut berdasarkan fakta setiap kes. Seksyen ini tidak terpakai kepada siasatan oleh Lembaga Penasihat yang ditubuh di bawah Perkara 151 Perlembagaann Persekutuan.

[Rayuan ditolak.]

Cases referred to:

Lim Yack Boon v. Dep. Minister for Home Affairs & Anor. [1990] 1 CLJ (Rep) 403 ***(ovrl)***
Oo Hua Lai v. Minister for Home Affairs & Anor. [1990] 1 CLJ (Rep) 438 ***(dist)***
Tai Haai Yang v. Timbalan Menteri Dalam Negeri & Anor. [1990] Malaysian Law News 325 (May) ***(foll)***

Legislation referred to:

Dangerous Drugs (Special Preventive Measures) Act 1985, ss. 6(1), 11A(1), 15, 16
Emergency (Public Order and Prevention of Crime) Ordinance 1969, ss. 3(1), 4(1), (2), 12, 13
Federal Constitution, art. 151

For the appellant - Karpal Singh; M/s. Karpal Singh & Co.
For the respondents - Suriyadi bin Halim Omar, SFC

JUDGMENT

Hashim Yeop Sani CJ (Malaya):

This appeal was against the decision of the learned Judicial Commissioner R. Talalla (as he then was) who dismissed the appellant's application for *habeas corpus* and who also dismissed 22 other similar applications (Criminal Applications Nos. 44-43 of 1989, 44-66 of 1989, 44-85 of 1989, 44-18 of 1990, 44-31 of 1990, 44-51 of 1990, 44-52 of 1990, 44-53 of 1990, 44-79 of 1990, 44-81 of 1990, 44-83 of 1990, 44-89 of 1990, 44-93 of 1990, 44-94 of 1990, 44-97

of 1990, 44-99 of 1990, 44-100 of 1990, 44-101 of 1990, 44-103 of 1990, 44-121 of 1990, 44-124 of 1990, 44-132 of 1990).

All the applications before the learned Judicial Commissioner raised a common point of law and the sole point was whether the provisions of ss. 15 and 16 of the Dangerous Drugs (Special Preventive Measures) Act, 1985 (the Act) had been breached.

In all these cases all the applicants were subjects of detention orders made under s. 6(1) of the Act and all were removed from the place of detention to attend the enquiry by the Advisory Board constituted under art. 151 of the Federal Constitution. It was contended on their behalf that the removal to attend the enquiry by the Advisory Board without an order of the Minister under ss. 15 or 16 of the Act rendered their further detention unlawful.

The appellant relied on *Lim Yack Boon v. Dy. Minister for Home Affairs & Anor.* [1990] 1 CLJ (Rep) 403 where Ahmad Fairuz, Judicial Commissioner (as he then was), ruled that the applicant was entitled to an order of *habeas corpus* because the respondents had failed to follow the requirements of s. 16 of the Act which he said required the Minister to issue an order before the applicant could be brought to Pulau Jerejak to attend the review enquiry by the Advisory Board. The applicant was then detained at the Pusat Pemulihan Akhlak, Muar, Johor.

Lim Yack Boon was subsequently followed by the Penang High Court in *Oo Hua Lai v. Minister for Home Affairs & Anor.* [1990] 1 CLJ (Rep) 438. There Dato' Abdul Hamid bin Mohamed, Judicial Commissioner, was dealing with an application for *habeas corpus* in respect of a detainee under the Emergency (Public Order and Prevention of Crime) Ordinance 1969. In *Oo Hua Lai* the applicant was arrested pursuant to s. 3(1) of the Emergency Ordinance 1969 and the Deputy Home Affairs Minister issued an order under s. 4(1) of the said Ordinance directing the applicant be detained for two years in the Pulau Jerejak Rehabilitation Centre or such other places as may be directed by the Minister from time to time. However during the duration of the said detention the applicant was taken out of the Centre on several occasions to attend Court proceedings in the Melaka Magistrate's Court as a witness without any order from the Minister or the Deputy Minister under ss. 12 or 13 of the said Ordinance. The learned Judicial Commissioner held that by taking the applicant out and detaining him in places other than that mentioned in the detention order without an order from the Minister under ss. 12 or 13, the respondent had not complied with the detention order and the provisions of ss. 4(2), 12 and 13 of the Ordinance. The result was that the applicant's detention in other places during those times was not done in accordance with the law and was illegal. In his judgment the learned Judicial Commissioner referred to *Lim Yack Boon* (*supra*) and said that he agreed with the decision therein.

In our view *Oo Hau Lai* was correctly decided on the facts and the law applicable in that case. But we are of the view that the learned Judicial Commissioner in *Lim Yack Boon* did not construe ss. 15 and 16 of the Act correctly.

Sections 15 and 16 of the Act read as follows:

> 15. (1) The Minister may by order direct the removal from any place of detention to another place of detention to be specified in such order of any person detained under subsection (1) of s. 6, to be there detained under subsection (1) of s. 6, or under subsection (1) s. 11A, to be there detained for the whole or any part or parts of such period for which it has been ordered that such person shall be detained.
>
> (2) Any person in the course of removal under subsection (1) shall be deemed to be in lawful custody.

> 16.(1) On proof to his satisfaction that the presence at any place of any person detained under subsection (1) of s. 6, or under subsection (1) of s. 11A, or lawfully in the custody of the police or confined in any prison whether under subsection (1) of s. 6, or under an order of any Court or otherwise howsoever, and notwithstanding any order of any Court or other authority whatsoever, is required in the interest of justice, or for the purpose of any public or other inquiry, or in the national interest or in the interests of the person detained, in custody, or confined, the Minister may order that such person be taken to that place.
>
> (2) Any person in the course of being taken to any place under subsection (1) and whilst at such place shall be kept in such custody as the Minister may direct and whilst in that custody shall be deemed to be in lawful custody.

It can be seen that s. 15 speaks of a removal from a place of detention to another place of detention. It is clear also that s. 16 of the Act confers a discretion on the Minister to order that a detainee may be taken to another place on proof **to the satisfaction of the Minister** that the presence of the detainee at the place is required in the interests of justice or for the purpose of any public or other enquiry or in the national interest or in the interests of the person detained.

It was argued on behalf of the appellant, however, that because there is no provision in art. 151 of the Federal Constitution for the procedure for removal of a detainee from a detention centre to attend an enquiry of the Advisory Board, the procedure under ss. 15 and 16 of the Act must be followed.

Judicial Commissioner Talalla disagreed with this argument and said in his grounds of judgment as follows:

> I do not agree. To my mind, these applications having been argued on the basis that the applicants had a constitutional right to attend the proceedings before the Advisory Board it had to follow that they had a corresponding right to be removed from their respective places of detention and taken to attend before the Board. The authority for the steps taken to give effect to those rights is the Constitution itself. Consequently there was no necessity for any order under either s. 15 or 16 of the Act.

There was in fact an earlier decision on the same issue by Wan Adnan J in *Tai Haai Yang v. Timbalan Menteri Dalam Negeri & Anor*. High Court Penang Criminal Application No. 44-61-89 reported in the Malaysian Law News, May 1990, p. 325. Wan Adnan J's view is reproduced as follows:

> In my view it is not necessary to have the authorisation of the Minister to take the detainee out of the place of detention for the purpose of attending the review by the Advisory Board. It is the requirement of s. 11 of the Act that the detention order of the applicant be reviewed by the Advisory Board. The applicant has a right to attend the review and that right cannot be denied to him. Section 16 of the Act is not meant for this situation. The power of the Minister under s. 16 is discretionary. It is only in a case where it is proved to his satisfaction that a detainee's presence at any place is required that he (the Minister) may make the order authorizing the detainee to be taken to that place. It is not necessary to prove to the Minister the necessity of the applicant's presence at the review by the Advisory Board of the detention order against him. He has the right to the present either in person or with his advocate. The Minister has no discretion. Section 16 is meant for a situation where the presence of the detainee may be required for some other purpose and in a case where the Minister may exercise his discretion.

We have no doubt that the views expressed by the last two learned Judges reflect the correct interpretation of ss. 15 and 16 of the Act.

Section 16(1) gives a discretion to the Minister which discretion he may or may not exercise depending on the facts of each case. It has however no application to an enquiry of the Advisory Board constituted under art. 151 of the Constitution.

Also found at [1991] 3 CLJ 2777